

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TUFAMERICA, INC.,

Plaintiff,

vs.

CODIGO MUSIC, LLC,
CODIGO PUBLISHING, LLC,
CODIGO ENTERTAINMENT, LLC,
THE CLYDE OTIS MUSIC GROUP and
MORTON CRAFT,

Defendants/Counterclaimants.

Case No. 11-CV-1434 (ER/DCF)

**Declaration of Nicholas Schmitt
In Support of Scott Zarin, Esq.'s
Motion For Leave To Withdraw
As Counsel**

I, Nicolas Schmitt, hereby declare and aver:

(1) I am the Director of Business & Legal Affairs for TufAmerica, Inc. ("TufAmerica"), the plaintiff in the above-captioned action, and I offer this declaration in support of counsel Scott Zarin's motion to withdraw in this matter.

(2) As Director of Business & Legal Affairs for TufAmerica, my responsibilities include but are not limited to overseeing litigation conducted by outside counsel, including this action. However, I do not have authority to make strategic decisions regarding pursuing or resolving litigation or how much, when or whether to pay outside counsel for their services. All of these decisions are made by Aaron Fuchs ("Fuchs"), TufAmerica's owner and president.

(3) On or about January 16, 2017, I informed Scott Zarin, Esq., who is outside counsel for TufAmerica in this action, that Mr. Fuchs did not intend to pay the full amount due on Mr. Zarin's bills on this matter, which at that time totaled approximately \$32,000, and that Mr. Fuchs believed Mr. Zarin was nonetheless obligated to draft TufAmerica's brief in opposition to Defendants' proposed final order and judgment.

(4) Subsequently, Mr. Fuchs indicated to me that he does not intend to pay Mr. Zarin's bills in this matter at all and believed he had substantive reasons for refusing to do so. He also indicated that he no longer wishes to have any communication with Mr. Zarin regarding this matter and has ceased responding any e-mails Mr. Zarin sends him about it. He further indicated that he consents to Mr. Zarin's withdrawal as counsel in this matter.

(5) After Mr. Zarin filed TufAmerica's opposition to Defendants' proposed final order and judgment, on February 10, 2017, I related the comments Mr. Fuchs made to me, in paragraph 4 above, to Mr. Zarin.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: February 12, 2017


